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Ad Hoc Committee on an International Convention against the Reproductive Cloning of Human Beings
25 February-1 March 2002

Draft report of the Ad Hoc Committee

Rapporteur: Mr. Mahmoud D. **Hmoud** (Jordan)

I. Introduction

1. The Ad Hoc Committee on an International Convention against the Reproductive Cloning of Human Beings was established by the General Assembly in paragraph 1 of its resolution 56/93 of 12 December 2001, to consider the elaboration of an international convention against the reproductive cloning of human beings. In accordance with paragraph 3 of the same resolution, the Ad Hoc Committee met at Headquarters from 25 February to 1 March 2002.[1]

2. In accordance with paragraph 1 of resolution 56/93, the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency. In addition, pursuant to paragraph 2, the Secretary-General was requested to invite the specialized agencies that work and have substantial interest in the field of bioethics, including, in particular, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO) to participate as observers in the work of the Ad Hoc Committee.

3. On behalf of the Secretary-General, the Legal Counsel of the United Nations, Hans Corell, opened the session of the Ad Hoc Committee.

4. At its 1st plenary meeting, on 25 February, the Committee elected the members of its Bureau, as follows:

Chairman:
Peter Tomka (Slovakia)

Vice-Chairpersons:
Christian Much (Germany)
Gaile A. Ramoutar (Trinidad and Tobago)
Rosette Nyirinkindi Katungye (Uganda)

Rapporteur:
Mahmoud D. Hmoud (Jordan)

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5. Václav Mikulka, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee. Mahnoush H. Arsanjani, Deputy Director of the Division, acted as Deputy Secretary of the Ad Hoc Committee and Secretary to its Working Group of the Whole. The Codification Division provided the substantive services for the Ad Hoc Committee and its Working Group.

6. Also at the 1st plenary meeting, the Ad Hoc Committee adopted the following agenda (A/AC.263/L.1):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Exchange of information and technical assessments provided by experts on genetics and bioethics.
6. Consideration of the relevant questions referred to in paragraph 3 of General Assembly resolution 56/93 of 12 December 2001, in accordance with the mandate of the Ad Hoc Committee as set out in that resolution.
7. Adoption of the report.

7. In accordance with paragraph 3 of resolution 56/93, the task of the Ad Hoc Committee was to consider the elaboration of a mandate for the negotiation of an international convention, including a list of the existing international instruments to be taken into consideration and a list of legal issues to be addressed in the convention. The Committee had before it an information paper prepared by the Secretariat containing a basic list of international instruments (A/AC.263/2002/INF/1) and a proposal submitted by France and Germany on the list of legal issues that might be addressed in the convention (A/AC.263/2002/DP.1) (see the annex to the present report).

II. Proceedings

8. At its 1st plenary meeting, the Ad Hoc Committee adopted its programme of work. Pursuant to paragraph 3 of General Assembly resolution 56/93, in which the Assembly decided that the Ad Hoc Committee would open with an exchange of information and technical assessments provided by experts on genetics and bioethics, an expert-level segment was held at the 1st and 2nd plenary meetings of the Committee. Five experts provided the Committee with scientific, technical, ethical, philosophical and legal information relevant to the topic.

9. The Ad Hoc Committee held three plenary meetings, from 25 to 26 February, and three meetings in the context of a Working Group of the Whole, on 26 and 27 February. At its 4th plenary meeting, on 1 March 2002, the Committee adopted its report.

A. General exchange of views

10. At its 3rd plenary meeting, on 26 February, the Ad Hoc Committee held a general exchange of views. Members expressed general support for the timely convening of the Ad Hoc Committee and appreciation to the Governments of France and Germany for proposing the initiative to consider the elaboration of an international convention against the reproductive cloning of human beings. It was noted that the expert-level segment had provided the Ad Hoc Committee with valuable background information, which would greatly assist the Committee in its further deliberations on the topic.

11. There was general agreement that the reproductive cloning of human beings was a troubling and unethical development in biotechnology, and that it should be prohibited. It raised moral, religious, ethical and scientific concerns and had far-reaching implications for human dignity.

12. Some delegations expressed their preference for a focused approach and a narrow negotiating mandate on a universal ban on the reproductive cloning of human beings, in an international convention. It was noted that a focused approach was necessary in view of the urgency of the matter.

13. Some other delegations favoured a more comprehensive approach, to include also a ban on "therapeutic" cloning for experimental and research purposes. In their view the creation of a cloned embryo, which would then be used to derive stem cells or, once the embryo had developed into the foetal stage, tissue for transplantation, should also be addressed. They suggested that human adult stem cells should instead be used for research purposes.

14. A view was also expressed suggesting that in the light of the fact that research in the field was still at an early stage, the Ad Hoc Committee might wish to consider imposing a moratorium on reproductive cloning rather than a permanent prohibition, until such time as the international community had a better understanding of cloning.

B. List of legal issues to be addressed

15. The Working Group of the Whole held two meetings on 27 February to consider the question of the list of legal issues to be addressed in the proposed convention. It had before it a proposal submitted by France and Germany (A/AC.263/2002/DP.1).

General comments

16. All speakers expressed their gratitude to the sponsor delegations for the proposed list of issues contained in document A/AC.263/2002/DP.1. At the same time, several speakers indicated that their views were only of a preliminary character as they were still in the process of formulating their positions on the proposed convention, and therefore more time for deliberation would be needed. It was also reiterated that the Ad Hoc Committee was only required to consider whether certain issues should be included in the eventual mandate for the convention, and not to enter into a substantive discussion at the current stage.

17. While support was expressed for the structure of the list of issues proposed by France and Germany, it was also suggested that the social, cultural and ethical aspects should be examined, as well as the role of women. The view was expressed that consideration had to be given to the fact that developing countries were particularly susceptible to the threat posed by new biotechnologies. Several delegations expressed their understanding that the proposed convention should be conceptualized within the human rights framework. The view was however expressed that the proposed convention should not accord any rights which were not already recognized by existing human rights treaties. A further view considered that each country had the right to undertake scientific research.

Subparagraphs (a) to (c)

18. With regard to the considerations and purposes of the proposed convention, support was expressed for a multidisciplinary approach encompassing the legal, ethical, moral and social aspects. At the same time, it was noted that the conceptual basis of the proposed convention had to be clarified in advance.

19. As to the scope of the proposed convention, the view was expressed that the mandate of the Ad Hoc Committee was not constrained to a ban on human reproductive cloning. Instead, the Committee had been entrusted with the task of considering the elaboration of the mandate for the proposed convention. As such, the scope of the convention could not be considered as having been predetermined by General Assembly resolution 56/93.

20. Furthermore, the view was expressed that the possibility of human reproductive cloning could not be adequately countered without addressing therapeutic cloning, and that the scope of the proposed convention would have to take that into account. It was thus proposed that any such ban should focus on the process of cloning as opposed to looking at the end result of cloning. It was also noted that, by excluding therapeutic cloning, the international community would risk creating the perception that such cloning was permissible. It was further stated that a partial ban, covering only reproductive cloning, would be a false ban and would be ineffective in practice.

21. In terms of a further view, the Ad Hoc Committee should approach the issue with a sense of urgency since it was conceivable that the first successful cloning of a human being could take place soon. It was proposed that a pragmatic approach should be adopted, whereby the Committee would first focus on the area where general agreement seemed to exist among delegations, namely a ban on the reproductive cloning of human beings. It was pointed out that widening the scope of the potential convention to include issues for which no consensus existed could threaten the entire exercise, leaving the international community without a coordinated legal response. The example was cited of experiences at the regional level where the inclusion of controversial matters served only to prolong the negotiations on similar international agreements. It was also observed that it was important that the treaty should enjoy universal acceptance so as to prevent the establishment of "cloning havens" where such activities were not prohibited.

22. It was similarly pointed out that there was no intention to draw a distinction between different ethical priorities. Instead, the real distinction was between what was realistically achievable and what was not. It was suggested that different possibilities could be considered, including covering other forms of cloning by

alternative mechanisms, but without preventing the adoption of an international instrument banning the reproductive cloning of human beings. For example, it was suggested that a step-by-step approach could be adopted, beginning with a convention on banning the reproductive cloning of human beings. It was also noted that the adoption of a global ban on reproductive cloning would in no way limit the ability of States to regulate other forms of cloning by means of national legislation. As to concerns about the possible limited effectiveness of a narrow agreement, it was observed that a prohibition on reproductive cloning would serve to delegitimize any scientific actions aimed at cloning human beings, and would be a strong economic disincentive to private-sector actors who might be considering funding such research.

23. With regard to the proposal under consideration, it was suggested that the content of subparagraph (a) would typically be the subject matter of the preamble to the proposed convention, and that while it was strictly not necessary to stipulate that States parties could adopt stricter regulations, such provisions had been included in existing treaties. A suggestion was also made that the proposal in the final sentence of the subparagraph could be covered by the concept of national implementation in subparagraph (d). It was also proposed that a reference should be included to the "protection of human rights and dignity of the human being with regard to biology and medicine", based on a similar formulation found in article 1 of the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.

24. As regards the inclusion of definitions in the proposed convention, it was noted that the definition of the critical terms would bear on the scope of the convention itself. It was proposed that, if it were accepted that all cloning was reproductive cloning, then a distinction could be made between "live birth" and "experimental" or "therapeutic" cloning. It was also suggested that the convention should clarify the technical terminology to be proscribed, so as not to inadvertently cover similar techniques that might be acceptable and of medical benefit. A further view considered that by describing procedures, for example, embryo-splitting and somatic cell nuclear transfer, the proposed convention would run the risk of becoming outdated each time a new scientific procedure for cloning was developed. Instead, it was proposed that a definition of cloning could be formulated in terms of the result intended to be achieved, as had been done in the Additional Protocol adopted by the Council of Europe. It was also suggested that further precision might usefully be introduced by, for example, indicating that it was *intentional* cloning that would be proscribed. At the same time caution was advised so as not to adopt a definition that would inadvertently affect other issues.

25. As regards subparagraph (c), the proposal was made to include a prohibition on other types of cloning. It was noted that the subparagraph was linked to the eventual scope of the proposed convention. It was also suggested that the convention could provide a framework for dealing with cloning, whereby reproductive cloning would be banned and a moratorium on other similar genetic technologies could be considered.

Subparagraphs (d) to (h)

26. As regards subparagraph (d), attention was drawn to several possible model provisions contained in the International Convention for the Suppression of Terrorist

Bombings and the International Convention for the Suppression of the Financing of Terrorism. The view was expressed that it should remain the prerogative of individual States to decide whether or not to impose sanctions. It was also considered that there should be an obligation on States to impose sanctions. It was noted that the word "sanctions" was confusing, and should be replaced by "penalties", or clarified in some other way, in order to make it clear that the intention was to impose obligations on parties to penalize the act prohibited. It was further noted that the intention was to cover both criminal and civil and administrative measures. The view was also expressed that other issues might be covered by national laws, and that accordingly the subparagraph should not be limited to sanctions and material gains.

27. In connection with subparagraph (e), it was stated that the only effective preventive measure that would ensure that no cloned child was born would be to ban all human cloning, including therapeutic cloning. It was noted that the subparagraph envisaged measures which would be taken before an activity was undertaken, rather than after any such activity, such as policies that discouraged research in this area.

28. On subparagraph (f), the suggestion was made to consider the establishment of a monitoring body, drawing inspiration from a number of United Nations human rights treaties. It was also noted that use could be made of relevant international organizations with expertise in this field, such as UNESCO and WHO.

29. With regard to subparagraph (g), the view was expressed that the Ad Hoc Committee should bear in mind the economic impacts of such a convention on developing countries.

30. On subparagraph (h), the suggestion was made to consider whether or not to allow the possibility of reservations to be made to the convention.

Other issues

31. Several suggestions were put forward for the inclusion of additional issues. These included having a preamble, which could make reference to relevant human rights instruments and the Universal Declaration on the Human Genome and Human Rights, as well as a provision requiring periodic review of the convention. It was further suggested that consideration should be given to the nature of the proposed convention, namely whether the ban would be time bound or permanent. Others suggested that reference should be made to the precautionary principle, and that the scope and relevance of intellectual property rights should also be considered.

C. List of relevant international instruments

32. The Working Group considered the issue of a list of international instruments to be taken into consideration at its 1st meeting, on 26 February. It had before it an information paper prepared by the Secretariat (A/AC.263/2002/INF/1).

33. The Ad Hoc Committee took note of the document and expressed gratitude to the Secretariat for its efforts. It was suggested that a clearer distinction should be drawn between the status of the different regional texts and instruments that were included. It was also proposed that the paper could usefully include examples of pertinent provisions in other areas, for example, as adopted in the anti-terrorism context, which could serve as model provisions for a future convention against

human reproductive cloning. It was agreed that a revised paper would be submitted for consideration at the September meeting of the working group of the Sixth Committee.

Notes

[1] Further information on the Ad Hoc Committee is available at www.un.org/law/cloning/index.html.

Annex

Written proposals submitted by delegations

List of issues that may be addressed in the Convention

Proposal submitted by France and Germany*

1. The General Assembly decided in its resolution 56/93, paragraph 3, that the Ad Hoc Committee established by the resolution shall, in the framework of considering the elaboration of a mandate for the negotiation of an international convention to prohibit the reproductive cloning of human beings, be provided with a list of legal issues to be addressed in the convention. To facilitate negotiations, France and Germany would like to submit the following ideas. They are not to be understood as taking a position on the issues listed or on the final wording of the future convention.

2. Proposed list of legal issues to be addressed in the convention:

(a) *Considerations and purposes*
The convention may wish to explain its considerations and purposes. It may also address the possibility for States parties to adopt stricter national regulations.

(b) *Definitions*
According to the usual practice, definitions of technical terms may be given to the extent that they are useful for the clarification of the articles of the convention.

(c) *Prohibition of reproductive cloning of human beings*
Under this issue, the prohibition of the reproductive cloning of human beings would be specified.

(d) *National implementation*
A provision on national implementation could deal with the translation of the convention into the national sphere.

(i) *Sanctions*. Under this issue, the question could be addressed of how violations of the prohibition of the reproductive cloning of human beings should be sanctioned by States parties.

(ii) *Material gains*. Under this issue, the question of material gains derived from the reproductive cloning of human beings could be addressed.

(e) *Preventive measures*
Under this issue, the question of whether and how States parties should take preventive measures, including in the field of research, could be addressed.

(f) *Reporting and monitoring mechanism*
Here, it could be discussed whether and how national implementation would be monitored.

* Originally issued under the symbol A/AC.263/2002/DP.1.

(g) *Assistance for implementation*
There could be a need to assist States parties in their national implementation of the convention.

(h) *Final clauses*
Consideration should be given to the final clauses of the convention.